IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

WP(C).No. 34477 of 2007(D)

PETITIONER:

SALEELA K.S., AMMU'S FOOD PRODUCTS (DEFUNCT) KOTTAYATHUPARA, KUREEKKAD P.O THIRUVANKULAM, ERNAKULAM DISTRICT.

BY ADV. SRI.VIJAYAN. K.U.
SRI.K.N.SREEKUMARAN

RESPONDENTS:

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1. **SALES TAX OFFICER, IST CIRCLE, TRIPUNITHURA.**

2. **DEPUTY COMMISSIONER (APPEALS), ERNAKULAM.**

3. **THASILDAR (RR), KANAYANNUR TALUK, KOCHI - 682 011.**

4. **STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, GOVT.SECRETARIAT, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI. C.K.GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

W.P.(C) 34477 of 2007

Dated: December 17, 2007

JUDGMENT

For the assessment year 2002-03, annual return was filed and thereafter pre-assessment notices were issued requiring the petitioner to appear on 6.11.2006. It is stated that the petitioner received the notices only on 16.11.2006. It is stated that the request made by the petitioner for one month's time to file reply to the notice was rejected and assessment was completed by Ext.P4 order levying tax of Rs.82,447.64 and penalty of Rs.2,47,343/-.

2. It is stated that the petitioner has filed Ext.P5 appeal together with applications for an early hearing and also for stay. Ext.P5(a) and Ext.P5(b) are the applications so filed by the petitioner. In the meantime, revenue recovery proceedings were initiated and in the stay petition that was heard by the Appellate Authority, Ext.P7 order has been passed requiring the petitioner to remit 1/3rd of the tax due and the penalty. Petitioner is also required to furnish security for the balance amount to the

satisfaction of the assessing authority. It is this order that is challenged in this writ petition.

3. A reading of Ext.P3 would reveal that the notice was served on the petitioner only on 16.11.2006 whereas she was required to appear before the assessing authority on 6.11.2006. Therefore the petitioner is justified in saying that she could not file her objections to Ext.P2. If that be so, that is a matter for consideration by the Appellate Authority.

3. Regarding the liability of payment of tax and penalty by the petitioner, I am not inclined to consider the merits of the contention. It is for the Appellate Authority to deal with such contentions. However, in view of the fact that the notice itself has not been served on the petitioner in time to appear and object to Ext.P2, I am inclined to modify Ext.P7.

4. Accordingly the conditions imposed in Ext.P7 order of stay will stand modified. The petitioner shall remit 50% of the tax due under Ext.P4 and furnish security for the balance amount and the penalty that was imposed. This the petitioner shall remit within two

weeks from today. Subject to remittance as above, Ext.P5 appeal will be dealt with on merits by the 2nd respondent and until orders are passed, revenue recovery proceedings will be deferred.

Writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE

mt/-